



SO ORDERED.

SIGNED this 27 day of July, 2007.


J. Rich Leonard
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WILMINGTON DIVISION**

IN RE:

**BENEATH THE TREES, LLC,

Debtor.**

**07-01664-8-JRL

Chapter 11**

ORDER

This case is before the court on the United States' motion to appoint a Chapter 11 trustee. The court conducted a hearing on this matter on July 12-13, 2007 in Raleigh, North Carolina, and July 19, 2007 in Wilmington, North Carolina.

The United States filed the motion seeking the court to appoint a Chapter 11 trustee, pursuant to 11 U.S.C. § 1104(a)(1), (a)(2), and (a)(3), on the basis of gross mismanagement, incompetence, unauthorized use of cash collateral, failure to comply with court orders, failure to make required post-petition tax deposits, conflicts of interest, dishonesty, and possible fraud. "The appointment of a trustee in a Chapter 11 case is an extraordinary remedy and the party seeking the appointment bears the burden of proof." In re Sovereign Estates, Ltd., 104 B.R. 702, 704-05 (Bankr. E.D. Pa. 1989). The court has discretionary authority to determine whether a debtor's conduct rises to a level sufficient

to warrant the appointment of a trustee. Committee of Dalkon Shield Claimants v. A.H. Robins Co., Inc., 828 F.2d 239, 242 (4th Cir. 1987). “There is a strong presumption that a debtor remains in possession absent a showing of need.” In re General Oil Distributors, Inc., 42 B.R. 402, 409 (Bankr. E.D.N.Y. 1984). This is consistent with “the overriding philosophy of Chapter 11, which is to give the debtor a second chance.” A.H. Robins Co., 828 F.2d at 240-41.

After carefully considering the exhibits and testimony provided at the hearing, the court does not find cause to appoint a trustee at this time. The court announced its findings of fact and conclusions of law at the close of the hearing. Based on the foregoing, the court denies the United States’ motion to appoint a Chapter 11 trustee without prejudice.

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